

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALLSTATE FIRE & CASUALTY INSURANCE
COMPANY,

Plaintiff,

vs.

HEATHER DIAMOND,

Defendants.

Case No. 2:14-cv-1044-GMN-VCF

AMENDED ORDER

This matter involves Allstate's declaratory-relief action against Heather Diamond. Before the court is Diamond's Motion for Attorney's Fees (#28¹). Allstate opposed (#29) and Diamond replied (#30). For the reasons stated below, Diamond's motion is denied.

LEGAL STANDARD

Our legal system generally requires each party to bear its own litigation expenses, including attorney's fees. This principle is so firmly entrenched that it is known as the "American Rule." *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975). Congress has authorized courts to deviate from this rule only in limited circumstances. In the context of this action, one statute permits the court to award attorney's fees to the prevailing party: 28 U.S.C. § 1927.

28 U.S.C. § 1927 applies to legal counsel, not the parties, and authorizes the court to award costs, expenses, and attorney's fees against "[a]ny attorney . . . who so multiplies the proceedings in any case[,] unreasonably and vexatiously." 28 U.S.C. § 1927. To award fees under section 1927, the court must find

¹ Parenthetical citations refer to the court's docket.

1 that an attorney acted “recklessly or in bad faith.” *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir.
2 1983); *Barnd v. City of Tacoma*, 664 F.2d 1339, 1343 (9th Cir. 1982).

3 The Ninth Circuit has made clear that “recklessness suffices for [section] 1927.” *Fink v. Gomez*,
4 239 F.3d 989, 993–94 (9th Cir. 2001). Indeed, “a finding that an attorneys recklessly raised a *frivolous*
5 argument which resulted in the multiplication of the proceedings is also sufficient to impose sanctions
6 under § 1927.” *In re Girardi*, 611 F.3d 1027, 1061 (9th Cir. 2010) (emphasis original) (citing *B.K.B.*
7 *v. Maui Police Dep’t*, 276 F.3d 1091, 1107 (9th Cir. 2002) (“[R]ecklessness plus knowledge was
8 sufficient to justify the imposition of § 1927 sanctions.”) When an attorney recklessly continues to
9 prosecute a case, even after it becomes apparent through discovery that there was insufficient evidence to
10 support the plaintiff’s claims, sanctions under section 1927 are warranted. *Girardi*, 611 F.3d at 1064
11 (citing *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 247 (affirming section 1927 sanctions for the “willful
12 continuation of a suit known to be meritless”).

13 DISCUSSION

14 Diamond’s Motion for Attorney’s Fees is denied. First, in addition to section 1927, Diamond
15 moves for attorney’s fees under Nevada Revised Statute section 18.010. (*See* Def.’s Mot. (#28) at 2–3).
16 Allstate’s alleged misconduct is procedural in nature and, therefore, governed by federal law. *See Hanna*
17 *v. Plumer*, 380 U.S. 460 (1965); *see also Galam v. Carmel (In re Larry’s Apt., L.L.C.)*, 249 F.3d 832, 838
18 (9th Cir. 2001) (“federal courts must be in control of their own proceedings and of the parties before them,
19 and it is almost apodictic that federal sanction law is the body of law to be considered in that regard”);
20 *Oliva v. Nat’l City Mortg. Co.*, 490 Fed. Appx. 904, 906 (9th Cir. 2012) (citing *Galam* and affirming Judge
21 Pro’s decision to not award attorney’s fees under Nevada Revised Statute section 18.010).
22

23 Second, Diamond’s basis for requesting fees under section 1927 is inadequate. She contends that
24 Allstate’s claims were frivolous and unreasonably and vexatiously multiplied proceedings because
25

1 insurance companies in general do what Allstate did here: litigated a declaratory-relief action over which
2 the district court declined to exercise jurisdiction. This argument fails as a matter of law. Section 1927
3 applies to legal counsel, not insurance companies in general. There is no evidence that legal counsel in
4 this action is acting on directions to follow the “the modus operandi” of the industry in general, other than
5 Diamond’s own assertions.

6 Nor is the court persuaded that Allstate’s claims vexatiously multiplied proceedings. The
7 Honorable Gloria M. Navarro, Chief U.S. District Judge, dismissed Allstate’s complaint “without
8 prejudice” by exercising her discretion under *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 494 (1942).
9 Chief Judge Navarro determined that the action should proceed in state court in order to avoid potentially
10 inconsistent rulings on a matter of state law. (*See* Doc. #25). Her ruling is a product of comity between
11 the state and federal government and not a judgment on the merits of Allstate’s complaint.

12 An award of attorney’s fees is also inappropriate because the state court action was not filed until
13 after Allstate commenced this action. This removes the predicate from Diamond’s motion. The court
14 cannot conclude, as Diamond alleges, that Allstate intentionally, recklessly, and willfully prosecuted a
15 claim that it knew would be dismissed on comity grounds because there was no state court action when
16 Allstate filed.

17
18 ACCORDINGLY, and for good cause shown,

19 IT IS ORDERED that Diamond’s Motion for Attorney’s Fees (#28) is DENIED.

20 This order does not address the pending bill of costs (#27). The record does reflect objection to
21 amount of costs taxed. The clerk of court may tax costs.

22 DATED this 4th day of May, 2015.



23
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE